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Electricité - Kiss.

INTERVIEW WITH ACTING SOLICITOR GENERAL ROBERT L. STERN

Acting Solicitor General Robert L. Stern was interviewed and discussed the case informally. He advised he was submitting a memorandum to the Attorney General in connection with the case and preferred that the FBI records and files show the contents of this memorandum as the substance of the interview with him. He furnished a copy of the memorandum which is incorporated below. He personally approved the summary of his views as included in the summary for the Attorney General as it was read to him.

His memorandum is as follows:

D.J.File:
95-23-38

RE: UNITED STATES EX REL DE LUCIA v. O'DONOVAN, UNITED STATES MARSHAL

The purpose of this memorandum is to set forth the facts with respect to the decision not to appeal the above case and the reasons for that decision. In view of its length a preliminary summary statement may be helpful.

Summary

1. Two district judges in two separate proceedings based on records identical in most respects held that there was no evidence to support the Parole Board's revocation of the paroles of DeLucia, Compagna and Gioe. The determination not to appeal from Judge Underwood's decision in the Compagna and Gioe cases was made by Solicitor General Perlman last February on the recommendation of the United States Attorney's office in Atlanta, the Custody Unit of the Criminal Division (Mr. Gottshall), the Appellate Section of the Criminal Division (Mr. Erdahl), the head of the Criminal Division (Mr. McInerney), the attorney in this office who had argued the case at an earlier

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stage in the Supreme Court (Mr. Silverberg) and myself. Mr. DeWolfe, trial attorney in the Criminal Division, was of a different view. The determination not to appeal in the DeLucia case was made by me upon the basis of the unanimous recommendations of the United States Attorney's office in Chicago, the Board of Parole, the Custody Unit of the Criminal Division, the Appellate Section of the Criminal Division, Assistant Attorney General Murray in charge of the Criminal Division, and Mr. Schwartz of this office.

2. The reasons for not appealing both cases were, in brief, that (a) the Government's evidence was too thin to warrant anyone in believing that the findings of the two district courts would be overturned on appeal; (b) the background of the cases, which indicated that the Parole Board had revoked the paroles because of Congressional pressure and not because of facts presented to the Board and judged independently of such pressure, made these very bad cases in which to argue that the Parole Board could revoke parole merely on the basis of suspicious circumstances and contrary to all the factual evidence available either to it or to the district courts; (c) the unattractive posture of these cases from the Government's viewpoint would be likely to lead an appellate court to render a decision which would be harmful to the Government in the general field of parole law -- a point made specifically by Mr. Justice Jackson during the argument in the Supreme Court in the Compagna case.

3. The telegram to the United States Attorney in Chicago was merely a routine message from the Criminal Division to the United States Attorney apprising him of the Solicitor General's decision not to appeal. This telegram, although not seen by me or sent by Assistant Attorney General Murray personally, was sent in the normal course by Mr. Gottshall after he was advised that the Acting Solicitor General had agreed with the recommendation not to appeal.

Background of the Cases

DeLucia, Compagna and Gioe were convicted under the Anti-Racketeering Act and sentenced to ten years in prison. Having served one-third of their sentences they were paroled on August 13, 1947. The speed with which they were paroled,

and their prior reputation as gangsters resulted in suspicion that there was something improper about the granting of the paroles. The granting of the paroles was criticised in the press, and a committee of Congress undertook an investigation of the operation of the Parole Board in relation to these cases. Members of the Parole Board testified before the committees that they knew of no grounds upon which the paroles could be revoked. Nevertheless, the Board was urged by committee members to revoke the paroles, and the Board advised the committee that it would reconsider the matter. On July 21, 1948, warrants were issued reciting that "reliable information had been presented" that the paroles had been violated. DeLucia was arrested in Illinois and filed a petition for habeas corpus in Chicago. Compagna and Gioe were brought to the Atlanta Penitentiary and filed petitions for habeas corpus in Georgia.

In the Georgia case, Judge Underwood ordered the petitioners released on the ground that the Board had no reliable information of parole violation when he issued his warrants. 82 F. Supp. 295. The Fifth Circuit Court of Appeals reversed on the ground that it was improper for the district judge to overturn the Parole Board before the Board had completed its proceedings, which would include a hearing for the petitioners. 178 F. 2d 42. (Prior to the time the case reached the Court of Appeals the Parole Board had held its hearing and determined that the paroles should be revoked.) The order of the Court of Appeals indicated, however, that it would be proper for the District Court, on amended pleadings, to consider a case as to the nullity of the orders revoking the paroles.

In Chicago, Judge Igoe also ordered the petitioner DeLucia released. 82 F. Supp. 435. There, the Government had demurred to the petition for habeas corpus on the ground accepted by the Fifth Circuit, that the application was premature before the Parole Board had concluded its administrative proceedings. In reliance on that ground, the Government refused to introduce evidence, 1/ and a final order was entered. The Government appealed, and the Seventh Circuit Court of Appeals affirmed the judgment of the District Court. 178 F. 2d 876.

In the case from the Fifth Circuit, the petitioner applied for certiorari to the Supreme Court, and in the Chicago

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1/ The Criminal Division was critical of this strategy, but did not direct the United States Attorney to seek leave to plead over until late in the proceeding. The application was denied.

case, the Government petitioned. The Court granted the petitions from the Fifth Circuit, which were filed first, and the cases were argued in October 1950. The Government's brief presented questions as to the prematurity of the District Court's action and as to the applicability of the Administrative Procedure Act. The brief plainly indicated that, after the Parole Board had finished its proceedings, it would then be proper for the petitioners to seek judicial review on the ground that the Board's action was arbitrary and capricious, that is, without any reliable information to support it. The Supreme Court affirmed the Fifth Circuit's judgment by an equally divided court, with Mr. Justice Clark not participating. 340 U.S. 880. Since it seemed clear that the question as to prematurity raised in the case from the Seventh Circuit would have been decided the same way, which in that case would have meant that the Government lost, the Government moved to dismiss its own petition for certiorari in the DeLucia case. 340 U.S. 886. I am told that it was understood within the Department that a new warrant would be issued against DeLucia, which would enable the anticipated petition for habeas corpus to be defended on the merits. This was done.

Judge Underwood's Decision

An amendment to the petition for habeas corpus was then filed in Atlanta, and a new petition in Chicago. Since the Parole Board had completed its proceedings, the Atlanta case was no longer premature, and a full hearing was held before Judge Underwood. In an exhaustive opinion (100 F. Supp. 74 (1951)), he concluded that there was not sufficient evidence of parole violation to justify the orders revoking parole of Compagna and Gioe. He held that there was merely "suspicion, belief, assumption and conclusions", but not evidence to support the Board's finding of parole violation, and that in the absence of "any evidence" of such violations the petitioners must be discharged.

The two charges against Compagna discussed in Judge Underwood's opinion are identical with the two principal charges against DeLucia. It was alleged that the petitioners had failed "to truthfully disclose associates on flight from Kansas City to Chicago following release from Leavenworth",

and that they had failed "to reveal sources of monies used in settlement of Internal Revenue tax". The court found no evidence to support such charges. The portions of the opinion summarizing the evidence on these questions is set forth in the note below. 2/ The opinion concludes on this point, p.81:

2/ "Upon leaving the Penitentiary the parolees were given railroad transportation, but were told by the warden that they could travel by plane at their own expense if they desired. Having traveled by plane they promptly returned the railroad tickets to the warden. Bernstein went to Leavenworth on August 12th to meet Compagna and present certain parole papers at the request of Mrs. Compagna who was ill. The automobile was furnished by Gizzo, a friend of petitioners living in Kansas City who had furnished such transportation on other occasions when Bernstein had visited the Penitentiary to consult with his clients about income tax matters. Before seeing the Warden at the Penitentiary, Bernstein had purchased, at the hotel where he was stopping, two airplane tickets dated August 12th, from Kansas City to Chicago for himself and Compagna. When he later saw the Warden he was informed that Gioe and DeLucia would be released at the same time. He thereupon tried to secure two additional airplane tickets for the same flight, but was told there were none available. Gizzo said that a friend, who was present, might get tickets for him for that or some other flight and suggested that Bernstein give him the two tickets and he would get two additional or four new ones. The suggestion was adopted and the next morning Bernstein received four new tickets dated August 13th. All the tickets were in Bernstein's name but bore different dates. The two original tickets were evidently sold to other parties without change of name since the flight records show they were used, but they were unknown to Bernstein and petitioners, who had never seen them before, and who had, during the flight of a little over two hours, had no association or conversation with them. (R. pp. 105, 273). There is not a scintilla of evidence as to the identity or reputation of the two unknown passengers although the Parole Board and the Federal Bureau of Investigation made diligent effort to secure such information. (R. pp. 44, 112). Nor is there any evidence that petitioners had any acquaintance, connection or association with them.

"Passing now to consideration of the other two allegations of parole violations charged to Compagna in items one and two, the facts are as follows.

"(4) As to the case of Compagna, the charges of three violations of parole resolve themselves into the single question of fact whether he knew the two unidentified airplane passengers and the source of the money used to pay his Federal Tax. If he was ignorant of these things, he of course could not disclose them and his failure to do so could not support the charge of dishonorable conduct. There is, then, left for determination the single question of whether there was any substantial evidence, or indeed any evidence at all, to show knowledge of Compagna of the vital facts. There is no direct evidence (R. p. 98) of such knowledge, which Compagna denies, but only inferences and conclusions drawn solely from what, according to Dr. Killinger's testimony, the Board "felt", "assumed", or "believed" and "that is all". (R. pp. 39, 40). With respect to the source of tax money, Dr. Killinger testified "I can't say that I know the exact identity of the individual or that Louis (Compagna) knows the individual". (R. p. 94).

2/ cont'd

"In item one he is charged with failure to disclose the source of monies used in settlement of his tax case. This settlement was made by his attorney in 1946 while Compagna was in the penitentiary and all his property under tax lien. (R. p. 101). The money used to pay the claim was brought, by others than Compagna, to attorney Bernstein who received the money and paid the Government. Mr. and Mrs. Compagna and Bernstein all testified that they did not know who the individuals were who furnished the money and made no inquiry. Compagna said he did not know but assumed that they were friends and might have been gamblers and that he did not undertake to search them out after release from prison because he feared he might get them into trouble and also endanger his parole status by charges of improper association. The money was brought in and received in unusual circumstances. Eight or nine individuals over a period of about thirty days brought in varying amounts in cash and gave them to Bernstein or his secretary. Neither names nor identification were requested or furnished and receipts were given stated the amounts but not the names of the depositors. (R. p. 397). The money was deposited in bank and the Government paid with Bernstein's checks. It is not claimed that he violated his parole by acquiescing in the payment of the tax in the manner described. The payment was made approximately a year before he was released on parole. But the charge is failure to reveal the source of the money. Dr. Killenger testified that he did not believe that Compagna knew the individuals who furnished the money but that he "believed" he knew "the group or the composite". (R. p. 94).

"(5) Suspicion, belief, assumption and conclusions alone are not evidence and are not sufficient to justify the revocation of parole. I conclude, therefore, that the order of revocation of Compagna's parole was arbitrary and a total nullity, because unsupported by substantial evidence, or any evidence, of parole violations and that he should be discharged as a reinstated parolee."

I have read the evidence, and do not believe that any impartial tribunal would have reached any other conclusion.

In accordance with the customary procedure, the Criminal Division was required to submit a recommendation to the Solicitor General as to whether Judge Underwood's decision should be appealed to the Court of Appeals. A long memorandum was submitted, which reviewed the evidence in great detail and concluded that there was not sufficient evidence on the Government's side to justify an appeal. The Criminal Division's memorandum indicated that its recommendation against appeal had been approved by Mr. Gottshall of the Custody Unit and Mr. Tysinger, the Assistant United States Attorney, both of whom had helped to try the case, and by Mr. Erdahl, of the Appellate Section, as well as by Assistant Attorney General McInerney; Mr. DeWolfe, another one of the trial lawyers, favored an appeal.

2/ cont'd

"Compagna could not disclose the sources of the money if he did not know them and he denied knowing them. There was no evidence of such fact other than the above circumstances and the suspicions and assumptions of the Board. (R. pp. 40, 94, 97, 98)." 100 F. Supp. at 76-77.

"It will be seen that, as to the case against Compagna, the entire complaint rests on the charge of failure to reveal two facts, identity of the airplane passengers and the sources of the money to pay tax, which he testified he did not know, and the conclusion that such failure constituted dishonorable conduct. There is no substantial evidence, if any evidence at all, to establish the alleged violations." 100 F. Supp. at 78.

In this office the matter was first reviewed by Mr. Stanley Silverberg, who had argued the Compagna case in the Supreme Court and was entirely familiar with the litigation. He approved the recommendation against appeal, and called attention to the observations of Mr. Justice Jackson during the course of his argument that this case was a bad one for the Government to present to the Supreme Court and would be likely to make bad law in the field of parole if the Court were forced to write an opinion. Mr. Silverberg also stated that "These cases are very unusual and highly unattractive. Chances of reversal are small and the questions raised have not been troublesome in the past nor is there reason to anticipate frequent recurrence in the future." I personally went over the memorandum and discussed the case with Mr. Silverberg, and endorsed his recommendation against appeal. Solicitor General Perlman agreed, and the case was not appealed. So far as I know, the Solicitor General did not call the case to the attention of the Attorney General.

Judge Igoe's Decision

In September 1952 Judge Igoe in Chicago entered a judgment in favor of petitioner in the DeLucia case, the one presently under discussion. The record presented to him consisted in the main of the record before Judge Underwood, or most of it. The few other additional documents throw no light on the matters at issue. No oral testimony was taken.

Judge Igoe noted that this was a second habeas corpus proceeding based upon a new warrant issued after the termination of the prior habeas corpus proceeding and that the cause had been continued by consent pending the outcome of the Atlanta case, in which the Government had not appealed. Two of the three charges against DeLucia were the same as against Compagna with respect to the airplane trip and the source of income tax payments, and the evidence was identical. As to these Judge Igoe found that "other than suspicious circumstances" the Government had "no evidence". (p. 6.)

The third specific charge related to money given by guests at DeLucia's daughter's wedding breakfast and reception. It was charged that this money was not reported to the parole

authorities on DeLucia's monthly income report. The opinion states as to this that

> *The local parole agent at the time had a complete report from petitioner that the money contributed by such guests was the property of the newly married couple and not income to petitioner. Such report was accepted by the parole authorities and there is no evidence to establish such funds belonged to petitioner and should have been reported to him." (p. 5)*

Despite this statement by the trial judge, there does not seem to be any evidence at all in the record with respect to this episode. None of the documents which the opinion lists as comprising the evidence (pp. 2-3) contains any reference to the wedding. The Government's return to the petition for habeas corpus quotes the Parole Board as having referred to the wedding episode as one reason for the revocation of parole. A letter from the United States Attorney, dated September 23, 1952, states that DeLucia had submitted affidavits explaining the source of the fund in the prior proceeding, that no evidence was submitted in the instant case bearing upon that point, and that Judge Igoe had apparently "considered the 'evidence' submitted by DeLucia" even though he had no record upon which to do so. The United States Attorney's letter further stated:

> *The Chicago Probation Office advises us that it was agreed between DeLucia and that office that DeLucia would make a complete report of the wedding incident through the probation officer at the end of that particular year. This report, we are informed, was made by DeLucia, and it is the same as the explanation given thereafter by the relator, namely, that the fund was derived as gifts from the guests who attended the wedding.*

The court concluded that prior to the issuance of the warrant "neither the local parole officers, nor any member of the Board appearing before the committee, had or knew of any facts or information of parole violation, considered petitioner was adjusting normally and was a good parole risk," that "there is no substantial or legal evidence to justify the charge of

parole violation," and that "The basis of both warrants are the conclusions arrived at by the present Board from inferences and suspicion created by the unfavorable publicity in the former Board granting the three paroles and the desire of the current Board to be relieved therefrom." (p. 8.) Accordingly, the court held that the warrant had been arbitrarily issued and was a nullity.

The Determination not to Appeal from Judge Igoe's Decision

Judge Igoe's decision of September 9 was forwarded to the Criminal Division by the United States Attorney's office in Chicago with a recommendation against appeal. The Criminal Division asked for the Parole Board's views. The Board stated that "we do not have evidence sufficient and necessary to sustain a subsequent revocation of parole" _/ and that "We do not, therefore, feel that an appeal should be taken from Judge Igoe's order in this case." With respect to the item as to the wedding, the Board said, "The only new allegation in this particular case as compared to the Compagna-Gioe case is the expenditures incurred in connection with DeLucia's daughter's wedding, and we have always felt that this evidence was not too well-founded."

A memorandum was than prepared in the Criminal Division recommending against appeal. This memorandum was written by Mr. Gottshall, who had participated in the handling of these cases and was fully familiar with them and who was also the Criminal Division's expert in the field of parole law. It was approved by Mr. Erdahl, Chief of the Criminal Division's Appellate Section, who had also been familiar with the cases since the Supreme Court litigation back in 1950. The memorandum was signed by Assistant Attorney General Murray. The recommendation was

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_/ Apparently the case before Judge Igoe was still based on the warrant and not upon a final decision of the Parole Board. Although in the Department's view, this made the case premature, that point had been lost on the prior appeal to the Seventh Circuit from Judge Igoe's first decision. Since the Supreme Court would still divide equally, it would have been futile to appeal this point again.

assigned to Mr. Murray Schwartz of this office, who concurred in the recommendation of the Criminal Division, and brought the papers in to me for final decision. _/ I read the recommendations and, having in mind our decision not to appeal the earlier judgment of Judge Underwood in the Compagna and Gioe cases and the discussion at that time, determined that the case should not be appealed. The reasons which led me to this conclusion were the following:

(a) The two district courts were correct in finding that there was "no evidence" but only suspicion and guess work to support the Board's revocation of the paroles. The district court's findings of fact can only be overturned if "clearly erroneous" (Rule 52(a)), and as to the two points passed upon by both courts, the tax money and the plane flight, it seemed to me almost inconceivable that the findings herein would be reversed. My own reading of the record has led me to the same conclusion. See pp. 4-6, supra. Insofar as the wedding money was concerned, I necessarily relied on the court's findings and the memoranda from the Parole Board and the Criminal Division, which indicated that the Parole Board or its local officer had been apprised of the facts. I have subsequently learned that no evidence was introduced on that point (see p. 7, supra); this in itself would prevent our relying on it on appeal as the basis for the parole revocation.

(b) The district court has implied, if not stated, that the Parole Board had been induced to revoke the paroles because of publicity and congressional pressure, and that it had not evaluated the evidence as objectively as it might have if such pressure had been lacking. A reading of the records and proceedings would lead any unbiased observer to the same conclusion. It was this factor which made the cases so difficult in the Supreme Court.

_/ The Criminal Division's recommendation reached this office on the afternoon of Friday, November 7, the day before the time for appeal expired in Chicago. In view of the short time available, both Mr. Schwartz and I found it necessary to dispose of the case that afternoon. I do not wish to suggest, however, that we would have come to any different decision if we had been able to spend a longer time on the matter; I am sure that we would not.

(c) Since we could not overturn the findings of fact on appeal, we would be forced to rely either on the argument (1) that the Parole Board's decisions are unreviewable, or (2) that mere suspicious circumstances are sufficient to support a revocation of parole despite the fact that all other factual evidence leads to the contrary conclusion.

> *(1) The Department conceded in the district court in the Atlanta case, as well as in its Supreme Court brief in the Compagna case (p. 48) that petitioners would have a cause of action if they could show that the revocation orders were totally void because issued arbitrarily without evidence or information of parole violation. Even apart from the authorities, these concessions seem to me to be sound. We should not argue that no matter how arbitrarily the Parole Board acts in revoking paroles, the courts can not give relief. Obviously we could not reverse our position on this question.*
>
> *(2) The contention that mere suspicious circumstances should be sufficient information for the Parole Board is not an attractive one, at least in this case. I would agree that the Board certainly needs less evidence in revoking parole than a court in a criminal trial or other proceeding. The question as to whether the Board may act on the basis of suspicious circumstances without more evidence may well be an important one. But this is no case to take that question to an appellate court. Here all the evidence as to what actually transpired tended to refute the Board's suspicions. Since the witnesses were interested persons and not paragons of credibility, this alone might not be decisive. But here the circumstances as a whole reflected upon the Board's good faith as much as upon petitioners. In my considered judgment, we would almost certainly lose on this issue if we sought to bring it up in this case. The result of an appellate decision to that effect might be harmful to the general operation of the parole system. If we do not appeal now we might ultimately secure a decision favorable to the Parole Board in a less embarrassing setting.*

(d) The fact that the Supreme Court divided evenly in the Compagna case gives us no encouragement. The issues which were there presented to the Court were whether the district court had acted prematurely in overturning the Board's warrant of arrest before completion of the Parole Board proceeding, and whether the Administrative Procedure Act applied to parole board proceedings. These seemed to be the only issues in this long litigation on which the Government was clearly right under accepted principles and prior authorities. And yet even on those points, the Supreme Court divided evenly--we suspect because of the special circumstances here presented. The Court had no reason to address itself to the points which would be presented in an appeal in the instant case, i.e., whether the evidence was sufficient to sustain the Parole Board's decision or whether the Parole Board's findings are unreviewable or supportable only on the basis of suspicion. Those points are so much harder than those upon which the Supreme Court divided that it is extremely unlikely that as many as four Justices would decide them in the Government's favor. Indeed the Court would not be likely to review the factual issues. See National Labor Relations Board v. Pittsburgh S.S. Co., 340 U.S. 498. We could hope at most to present broad questions of law as to the scope of judicial review -- and on the weak record in this case this would have been extremely unwise.

In concluding that this case should not be appealed, the fact that the Department might be subjected to unfavorable publicity did not occur to me. So far as I knew, there had been no such publicity when the Compagna and Gioe cases were not appealed last winter. The possibility that some newspapers might distort the reasons for the Department's action, however, would not have changed my conclusion. Public confidence in the Department can best be gained and retained, in my opinion, if we perform our duties as administrators of justice as honestly and ably as we can, without regard for the inevitable inaccuracies of headline-seeking newspaper reporters. I might also add, in view of the nature of the case, that of course the Solicitor General's Office takes into account the character of the defendants in deciding whether to appeal a criminal case or a proceeding related to a criminal case. But this has never meant that an appeal will be taken in any case involving a

gangster or other undesirable person irrespective of the evidence against him, or other pertinent legal considerations.

I did not call the case to the Attorney General's attention because there seemed no reason to do so. So far as I know, no Solicitor General has been directed to clear his decisions in passing upon appeal recommendations with the Attorney General or with any superior "policy group" in the Department. I have not been so instructed. If a case seems sufficiently doubtful and of enough public importance to cause the Solicitor General to believe that the Attorney General should be informed, a case may be discussed with the Attorney General. I have done this in other cases. It never occurred to me that this case fell within that category, both because I had no doubt as to the soundness of the unanimous recommendations and because of the similarity to the case which the Solicitor General had not appealed last year.

The Telegram to the United States Attorney

After I had signed the "No Appeal" authorization, Mrs. Lamb, Secretary in the Solicitor General's office, telephoned Mr. Gottshall to advise him of the decision, in view of the shortness of time. Mr. Gottshall then prepared the customary telegram to the United States Attorney stating that the case would not be appealed. This was in accord with ordinary Department routine, and it was not necessary for the Solicitor General or the Attorney General, or Assistant Attorney General Murray personally, to see the telegram. Since the time to appeal expired the next day, it was Mr. Gottshall's duty to see that the telegram went out immediately.

Robert L. Stern,
Acting Solicitor General

NOTE

Although copies of all interview memoranda are attached to yellow, there are no photostatic copies attached. The photostats are attached to the original.

HHC;atp

INTERVIEW WITH MURRAY L. SCHWARTZ
SPECIAL ASSISTANT TO THE ATTORNEY GENERAL
ASSIGNED TO THE SOLICITOR GENERAL'S OFFICE

Mr. Schwartz recalls this matter being presented to him. He read the memorandum of Mr. Gottshall and noted thereon in longhand on the first page the following, "Agreed - no appeal. Since the Board of Parole states that it has no evidence on which to revoke the parole, there seems to be no point in taking the appeal. 11/7/52. MLS."

Mr. Schwartz, in reaching his decision, considered the following matters:

(1) That three lower agencies, the U. S. Attorney, the Criminal Division, and the Parole Board, had all recommended against appeal. This seemed to him to create the presumption that unless he could think of a substantial reason to do differently he would concur with the recommendation, which he did.

(2) He considered that even if they could obtain a reversal of Judge Igoe's decision on technical grounds, the best they could hope for was a new trial in the same district on the same grounds and basis, perhaps with the same judge, and with a great likelihood of obtaining the same result. There seemed to be no reason to question the analysis of the evidence or the Parole Board's attitude that they could not sustain a revocation of parole.

(3) In the Compagna Case involving Compagna, et al, approximately the same evidence had been held insufficient to sustain a revocation of parole and the appeal of this decision was decided as undesirable by the department. Thus there existed a precedent for the decision.

(4) The parties were out on bond at the time and nothing to be gained by an appeal in order to temporarily restrain DeLucia, who would be continued on bond and thus no temporary advantage to be gained.

Mr. Schwartz recalled that the man involved was a typical hoodlum and he felt it was a shame there was nothing more substantial on which to base an appeal.

He advised that the memorandum came to him with a "special and urgent" label attached from Mrs. Lamb and she called attention to the fact that the time for appeal expired the next day. He estimates that he spent about two hours reviewing this matter, after which it was presented to the Acting Solicitor General, Mr. Stern.

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INTERVIEW WITH MRS. FRANCES MYERS LAMB
CLERICAL EMPLOYEE IN SOLICITOR GENERAL'S OFFICE

Mrs. Lamb recalled that on 11/7/52 she returned from luncheon rather late, as usual, about 3:00 P.M. Upon her return, she got a telephone call from Mr. Gottshall asking if his memorandum had come to her attention and she found the memorandum in her incoming box. Since the expiration of the appeal date was the following day, she carried the memorandum promptly to Mr. Frankel and found that he was busy on a special matter. Mr. Frankel asked that the matter be assigned to Mr. Schwartz, who was with Mr. Frankel at the time. The matter was assigned to Mr. Schwartz on the date of its receipt on 11/7/52, shortly after 3:00 o'clock.

After Mr. Schwartz had made a notation that he agreed that there should be no appeal, the memorandum was then presented to Acting Solicitor General Robert L. Stern, who, following an examination of the matter, signed the attachment approving the decision for no appeal.

She then recalls that she telephoned Mr. Gottshall and it was then 4:30 P.M. or later. She notified Mr. Gottshall that the decision was ready and it was dispatched to Mr. Gottshall with the notation of the decision attached to Mr. Gottshall's memorandum of 11/7/52 recommending against appeal.

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EXAMINATION OF DEPARTMENT'S FILE #95-23-38

Department file #95-23-38, upon examination, reflects the following of pertinent interest:

Memorandum dated 8/21/52, to be presented to the Court on 9/9/52 as the order and judgment of Judge Igoe, was received in the Department of Justice Records Branch and stamped "8/25/52." This memorandum is identical with the final Court order by Judge Igoe. A copy of a letter dated 9/3/52 to U. S. Attorney Otto Kerner, Chicago, signed by Assistant Attorney General Charles B. Murray, initialed by AEG, CBM, AFJ, FES, acknowledges receipt of Judge Igoe's memorandum dated 8/21/52, which is the order reflecting judgment to be presented to the Court on 9/9/52.

Letter of 9/9/52 to Assistant Attorney General Charles B. Murray, signed by Tom DeWolfe, encloses a copy of an opinion of Judge Igoe in this case. This communication was received, according to stamp in the Criminal Division and Records Branch, 9/11/52 and was initialed for file by AEG (Mr. Gottshall).

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58-2000-216?

RECEIPT OF WIRE AT U. S. ATTORNEY'S OFFICE, CHICAGO, FROM ASSISTANT ATTORNEY GENERAL MURRAY, ADVISING THAT THE SOLICITOR GENERAL HAS DECIDED AGAINST APPEAL AND THAT THE CASE IS, THEREFORE, CLOSED

SAC Malone of the Chicago Office, FBI, advised by telephone that the records show that the wire was dispatched from Washington over Public Building Service wire as message No. 377 on November 7, 1952.

Symbols on the wire indicated that it had been sent from Washington, D. C., at 6:27 p.m. EST and the message was completed at 6:31 p.m. EST, November 7, 1952.

The incoming wire was then block-stamped by Public Building Service Teletype Center, Room 426, U. S. Court House, Chicago, at 5:38 p.m. CST, November 7, 1952.

Miss Helen Gaskin, messenger for Public Building Service, then took the message to the U. S. Attorney's Office on the morning of November 10, 1952, and she obtained a receipt which was signed by the switchboard operator, G. Palme, of the U. S. Attorney's Office on November 10.

The message is then clock-stamped in the U. S. Attorney's Office at 9:02 a.m., November 10, 1952, which is Monday.

The manager of the Public Building Service advised that there had been an oversight in that the message was not delivered to the U. S. Attorney's Office on November 7. It is their usual practice to leave such wires with the guard at the building for delivery on Saturday morning by the guard to the first representative of the U. S. Attorney's Office who arrived on Saturday morning. This was not done in this instance, however, and the wire was retained by the Public Building Service until the morning of Monday, November 10, 1952.

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MR. ROBERT ERDAHL
CHIEF OF THE APPELLATE AND RESEARCH SECTION
CRIMINAL DIVISION

Mr. Erdahl is out of the city due to the death of his mother and will be absent for several days according to his secretary. No one in his office was aware of any information which would be helpful in this inquiry.

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FRED E. STRINE, CHIEF ADMINISTRATIVE
RELATIONS SECTION, CRIMINAL DIVISION

Mr. Strine is on Annual Leave and is not expected back until in late December, according to his office staff.

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on Florida and Nassau
on Honeymoon.

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ASSIGNMENT OF ASSISTANCE
MR. GOTTSHALL's OFFICE

Mr. Callahan of the Administrative Division of the Bureau, at my request, contacted personnel officer John W. Adler of the Department and ascertained that Mr. Joseph J. Cella, an attorney, had been assigned to Mr. Gottshall as an assistant on August 25, 1952.

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Mr. C. A. Tolson 11/19/52

Mr. H. H. Clegg

PAUL DeLUCIA alias PAUL RICCA
PAROLE MATTER

In connection with the inquiries which I was directed to make in the Department concerning the handling of the decision not to appeal in the above-entitled matter you are advised that I have reduced to writing the details of my interviews with various Departmental Officials and examinations of Departmental records. I then prepared a summary report of these details which I have delivered to the General Inuestigative Division for inclusion in the report which is being prepared in that Division. In order that source material might be available in the Bureau's records there are attached hereto the following:

Interview with Aaron E. Gottshall 11/14/52 - Criminal Division
Interview with Aaron E. Gottshall 11/18/52 - Criminal Division
Interview with Andrew F. Cohmann - Criminal Division
Interview with Assistant Attorney General Charles B. Murray - Criminal Division
Record of initials on memorandum recommending "no appeal"
Record of assignment of Assistance to Mr. Gottshall's office.
Absence of Robert Erdahl, Criminal Division
Absence of Fred E. Strine, Criminal Division
Report of delayed delivery of telegram to U. S. Attorney, Chicago
Notations from Department's file 95-23-38
Interview with Mrs. Frances Myers Lamb - Solicitor General's Office
Interview with Murray Schwartz - Solicitor General's Office
Interview with Acting Solicitor General Robert L. Stern

Photostatic copies of -
Decision of Judge Igoe dated 8/21/52
Acknowledgement dated 9/3/52 of Judge Igoe's decision dated 8/21/52
Letter 9/9/52 from DeWolfe enclosing copy of Judge's decision
Memo 10/16/52 soliciting views of Parole Board
Memo 10/21/52 submitting views of Parole Board
Letter 9/23/52 from U. S. Attorney re Judge's decision
Order of Court dated 9/9/52
Memorandum recommending "no appeal" and decision of Acting Solicitor General
File copy of wire 7/7/52 notifying U. S. Attorney of decision.

Tolson
Ladd
Nichols
Belmont
Clegg
Glavin
Harbo
Rosen
Tracy
Laughlin
Mohr
Tele. Rm.
Holloman
Candy

cc: Mr. Rosen

HHC:ATP

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INTERVIEW WITH MR. AARON GOTTSHALL
CRIMINAL DIVISION
DEPARTMENT OF JUSTICE
11/14/52

I called on Mr. Gottshall for the purpose of obtaining any files or records which would provide knowledge as to the background of this case. When I mentioned the fact that the memorandum prepared by him and recommending that no appeal be taken was dated November 7, 1952, the day before the appeal date had expired, he said that quite frankly "if the Attorney General should come in, "I'd tell him I'm sorry and I apologize for the delay is my fault from October 21, the date we heard from the Parole Board, until November 4." He stated that he had overlooked the urgency of this matter until someone called him. He believes that the U. S. Attorney's Office at Chicago had called Mr. Erdahl or someone else and they in turn had called him. He advised that he was so busy and had so much work that they needed three people in his office, but at times he was alone and at times he had one assistant. It was only three weeks ago that he got some help.

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Comments Concerning the Delay in Handling:

Although the prospective opinion of Judge Igoe was dated August 21, 1952, and although a copy of this prospective opinion was received on August 25, 1952, which was acknowledged in a letter dictated by Mr. Gottshall to U. S. Attorney Kerner on September 3, 1952, and although the letter from Tom DeWolfe of the Criminal Division to Assistant Attorney General Murray was dated September 9, 1952, and enclosed two copies of the opinion which were received on September 11, 1952, each of these copies received were "prospective opinions" of Judge Igoe which did not become effective until the order was made in Court on September 9, 1952. Even the copies sent by Mr. DeWolfe in his letter of September 9, were copies which had been furnished to him by Attorney Stewart representing DeLucia, and DeWolfe had received them prior to the order issued in Court on September 9.

Official notice to the Department of the actual order of Judge Igoe was contained in U. S. Attorney's letter of September 23, 1952, received in the Department on September 25, 1952. From this date official notice was available in the Department of Judge Igoe's order of September 9, 1952.

There was then a delay from September 25, until October 16, 1952, when Mr. Gottshall prepared a memorandum to the Parole Board asking for their views as to appeal. The Parole Board replied on October 21, 1952. There was then a delay from October 21, until November 4, 1952.

On November 4, 1952, Mr. Gottshall first saw a telegram dated October 31, 1952, from U. S. Attorney Kerner at Chicago, asking for instructions of Department as to the action which should be taken in connection with appeal. This wire might have been received in his office on the late afternoon of Monday, November 3, 1952, but Mr. Gottshall stated he did not see it until the morning of Tuesday, November 4, 1952. Within two hours thereafter he received a phone call from Mr. Erdahl advising that Assistant U. S. Attorney Lulinski of Chicago, had telephoned inquiring about the Department's decision. By that time Mr. Gottshall had started preparing a memorandum and so advised Mr. Erdahl. Mr. Gottshall stated he then worked all day and into the

evening and had his memorandum ready on the morning of November 5, but his Secretary was ill that day and did not come to work. She arrived on November 6 and then typed his memorandum recommending that no appeal be taken. Mr. Gottshall stated that he personally took the memorandum to Mr. Erdahl on the afternoon of November 6, and Mr. Erdahl reviewed it carefully, revamped and rewrote page 3 and returned it to Mr. Gottshall on the same evening, about 6:00 p.m., November 6.

Mr. Gottshall took the memorandum to Mr. Strine on November 7, 1952, in the morning. He spoke to Mr. Oehmann, Assistant to Mr. Murray, and pointed out the importance and urgency of the matter. He delivered the memorandum to Mr. Oehmann after Mr. Strine had reviewed it. Mr. Oehmann stated he would hold the memorandum for personal approval by Assistant Attorney General Murray. When Mr. Murray and Mr. Oehmann returned from luncheon, about 2:00 p.m., Mr. Gottshall learned that Mr. Murray had approved the memorandum before he went to luncheon and sent it to the Solicitor General's office.

Mr. Gottshall telephoned the Solicitor General's Secretary, Mrs. Lamb, and she advised that the memorandum had come while she was at lunch and she would handle it promptly. Mrs. Lamb phoned back about one or two hours later and stated that the opinion of "no appeal" had been reached in the Solicitor General's Office and Mr. Gottshall's Secretary went after the memorandum.

Since the Solicitor General's opinion had been rendered that there was to be no appeal, Mr. Gottshall then prepared the telegram to Chicago in the usual way and as a matter of routine business in notifying the U. S. Attorney at Chicago as to the decision.

Mr. Gottshall stated that he had discussed this matter rather thoroughly with Mr. Erdahl and briefly with Messrs. Strine and Oehmann. As to the specific reasons for the delay, Mr. Gottshall stated that he had had no help in his office on his vast volume of work since January, 1951, when Mr. Byerly, his assistant, was transferred to another office. In late July or early August, 1951, Mr. James Hansford was assigned to his office. Mr. Hansford was a "loadstone," was not interested, was unable to write

a letter, was interested in "big money and little work," and stayed around until April 15, 1952, when he went on vacation to Florida and resigned. Actually he was no help and he had no help until Mr. Joe Cella arrived on assignment in Mr. Gottshall's office on the week following Labor Day 1952. Mr. Gottshall stated he had been screaming for help. It takes at least two months to train a man assigned to his office and there were numerous and almost constant telephone calls with a large volume and constant pressure of work, which "accounts for the oversight." He pointed out that he turns back vacation time to the Government year after year. He stated that he was as sorry as he could be and offered his apologies for the delay and oversight. He stated there was no motivation involved. He handled the matter impersonally. He does not know DeLucia.

INTERVIEW WITH ANDREW F. OEHMANN
EXECUTIVE ASSISTANT TO THE ASSISTANT
ATTORNEY GENERAL OF THE CRIMINAL DIVISION

He observed the file copy of the outgoing telegram dated November 7, 1952, to the U. S. Attorney at Chicago, signed by Charles B. Murray, Assistant Attorney General, advising that the Solicitor General had decided against appeal of finding and order of Judge Igoe in the Paul DeLucia vs. Marshal O'Donovan Case and the case was therefore closed.

This file copy bears the initials AEG (Mr. Gottshall) and CBM (Mr. Murray). Under CBM was the initial "O." Mr. Oehmann stated he initialed this outgoing wire for Mr. Murray, who did not sign it since the Solicitor General had already rendered a decision. He also had initialed the memorandum prepared by Mr. Gottshall recommending against appeal and he concurred in the recommendation against appeal. He believes that Mr. Gottshall brought this memorandum to him about 10:00 or 10:30 a.m. on November 7, 1952. He placed his initials on the yellow copy. He noticed that Mr. Erdahl, the head of the Appellate Section, had already approved this recommendation against appeal.

Mr. Oehmann advised that he saw that this memorandum concerned the Delucia Case and he knew it was of sufficient importance for Assistant Attorney General Murray to see and approve this memorandum. Mr. Murray was attending a conference and returned to his office at approximately 12:30 or 1:00 p.m. Mr. Oehmann handed the memorandum personally to Mr. Murray and called his attention to the fact that Mr. Gottshall had stated the final appeal date was the next day, November 8, 1952. Mr. Murray then initialed the original memorandum after he reviewed it and had discussed the matter. Mr. Oehmann told Mr. Murray, he stated, that this case referred to one of the Chicago gangsters involved in the alleged payoff for parole. He called to the attention of Mr. Murray the importance of the case and explained why he had held the memorandum for Mr. Murray. After Mr. Murray had reviewed the matter and initialed the memorandum, it was sent either by Mr. Gottshall or one of the girls to the Solicitor General's office. After the Solicitor General's office had made the decision of no appeal and had returned the memorandum to Mr. Gottshall, then Mr. Gottshall's secretary brought in the telegram prepared by Mr. Gottshall to the U. S. Attorney at Chicago, in which the U. S. Attorney was advised of the decision and the fact that the case was closed.

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It was about 5:00 P.M. when this wire was brought in, whereupon Mr. Oehmann initialed it as a routine matter for Mr. Murray, placing his own initial underneath the initials of Mr. Murray, which he had affixed to the file copy. He recalls that he told Mr. Murray that one of the grounds on which they might get a reversal of the appeal was that DeLucia had not exhausted his legal remedies as he had not had his hearing before the Parole Board, but he further pointed out that the Parole Board stated there was insufficient evidence to show violation of parole. Mr. Oehmann concurred in the recommendation for no appeal on the basis of Mr. Gottshall's recommendation, Mr. Erdahl's concurrence, and the concurrence of the Parole Board.

INTERVIEW WITH
ASSISTANT ATTORNEY GENERAL CHARLES B. MURRAY

Without the file being available, Assistant Attorney General Murray stated that it was his recollection that the U. S. Attorney had forwarded Judge Igoe's decision to the Department with a letter. This decision and the letter got to the Criminal Division on September 25 and the same day was referred to Mr. Gottshall. Mr. Gottshall prepared a letter to the Parole Board on October 16, which was answered on October 21, and the substance of the answer was a recommendation against an appeal.

Mr. Murray stated that Mr. Gottshall prepared a memorandum recommending against appeal. It went to Mr. Erdahl, head of the Appellate Section of the Criminal Division, and then to Mr. Andrew F. Oehmann, Executive Assistant to the Assistant Attorney General of the Criminal Division. They concurred in the recommendation for no appeal and the memorandum then went from Mr. Oehmann to Assistant Attorney General Murray who initialed it to indicate his approval and concurrence. The memorandum then went to Acting Solicitor General Stern for final decision. The final decision as to "no appeal" was made by Mr. Stern.

Mr. Gottshall then prepared the telegram to the U. S. Attorney advising of the Solicitor General's decision, and this telegram was processed in the normal way through Mr. Oehmann.

Mr. Murray advised that after the Supreme Court's 4 to 4 decision on the question of whether an appeal could be taken before the Parole Board hearing, the case was then heard on its merits and the full hearing at Atlanta included testimony by members of the Parole Board. The Government lost its case and took no appeal.

The DeLucia case was similar in that the same two points were involved in this case as had been involved in the Compagna case in which no appeal was taken. In this case, however, DeLucia failed to report the $12,000 to pay for the wedding breakfast and reception and presumably claimed that it was his daughter's money and he also claimed that he had reported the matter to the local parole officer in Chicago.

Mr. Murray stated that the basis for any appeal which the Department could make would be (1) on the merits of the case; (2) on the stage of premature handling of the appeal before the Parole Board hearing. They did not believe that

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the evidence would justify an appeal on the merits and there had been a 4 to 4 decision on the question of premature hearing. Thus, they decided not to appeal because:

1. *The legal question involved was not worth anything.*
2. *If they applied for certiorari there would be a 4 to 4 decision, but this time the decision would be against the Government and they didn't believe they could get a change of view on the part of the Supreme Court.*
3. *The Parole Board indicated that even if they got a reversal they could not do anything because of a lack of evidence.*

Mr. Murray stated frankly that he did not like the delay in handling the case in his Division. The case should have been handled a month earlier. U. S. Attorney Kerner phoned Mr. Erdahl on Thursday before the appeal would expire and this should have been unnecessary, for the Department should have written the U. S. Attorney a decent letter long before.

As to noting an appeal at the last moment, they did not want to take this action because it would require positive action to withdraw the appeal subsequently and this would have resulted undoubtedly in some publicity.

Mr. Murray advised that he knew of no regulation which would require him to have reported this matter to the Attorney General before sending the wire to the U. S. Attorney, but it was his, Murray's, job to do so and he felt that it was his responsibility to have done so. He stated that this matter was considered by him on Friday, November 7. On Tuesday following November 7, he learned that the parolee in question went by the name of Ricca, but he frankly never had heard the name Ricca before. The next day, Wednesday, Ricca was identified to him as one of the Compagna group. If he had heard the name "Compagna," he undoubtedly would have identified the case as one which had resulted in considerable publicity previously. He might have identified the name "DeLucia," but he had never heard of the name Ricca before. He stated that the responsibility for initiating the "No Appeal" decision rested with him since it arose in his Division and he assumes that when the matter was presented to him he concurred in the recommendation for no appeal as it appeared largely to be a rehash of a previously decided matter.

Concerning the delay on the part of Mr. Gottshall, he stated that Gottshall had in fact been screaming for help, but this would not be a satisfactory answer because Mr. Gottshall got his help in August 1952.

The above were the results of a preliminary interview on November 14. Mr. Murray was later interviewed on November 18, and advised as follows:

Concerning Mr. Gottshall, Mr. Murray stated that Gottshall had been asking for relief, in fact screaming for relief, for a good while due to the heavy work load which he had, and he believes that it was in August that he was finally able to have Mr. Joe Cella, reported to be a capable man, assigned to aid Mr. Gottshall. He confirmed the fact that originally and earlier in the summer Mr. James Hansford had been assigned to assist Mr. Gottshall, but he did not prove to be satisfactory.

Mr. Murray believes that the delay in handling this matter was avoidable and not excusable. Saying this he wants to point out, that Mr. Gottshall, whom he has known for many years, is a devoted public servant, knows the law, is faithful, on the job regularly, undoubtedly has been overloaded with work and has had the problem of getting help. The type of help he needs should be expert help and then it takes a long time to train them. He is not disposed to criticize Mr. Gottshall personally as he is a victim of the situation. Mr. Murray stated that they had no follow-up system throughout the Division with a staff to maintain such a system. He advised that he is seriously considering installing a system with a staff designated for the purpose of maintaining the system in a practical way that does not involve too much overhead.

Concerning his approval of the memorandum prepared by Mr. Gottshall recommending no appeal, he states that he feels sure that he read Mr. Gottshall's memorandum, that the alias "Ricca" meant nothing to him and the true name "DeLucia" did not register. Yet he pointed out that an examination of the memorandum refers to the cases involving Compagna and that he must have, therefore, read the memorandum and recognized the importance of the case. Further, he states that if Mr. Oehmann, his Executive Assistant, recalls that he pointed out that DeLucia, alias Ricca, was a part of the Compagna group and pointed out the importance of this case, he knows that Mr. Oehmann's statements would be correct, although Mr. Murray is not able to reconstruct the exact details as of that time, when Mr. Oehmann discussed the case with him on November 7.

He recalls that Fred Mullen called him on November 11, which was Tuesday after the memorandum was submitted, and mentioned the name "Ricca" and he did not know what Mullen meant at the time and did not learn until the next day, Wednesday. Mr. Robert Erdahl, Chief of the Appellate Section, also had advised Mr. Murray that U. S. Attorney Kerner of Chicago had called Erdahl Wednesday night or on Thursday preceding November 7, and that Mr. Erdahl had told Kerner that if he did not hear anything to the contrary he was not to file an appeal. Concerning the outgoing telegram to the U. S. Attorney advising of the decision not to appeal, although Mr. Murray states that he did not see the telegram which was initialed for him by Mr. Oehmann, when he, Mr. Murray, initialed the memorandum recommending that no appeal be taken, he then in substance was approving the subsequent wire which was sent as a matter of routine after the Solicitor General had rendered an opinion in keeping with this recommendation.

Mr. Murray states that the most serious oversight in this entire matter as far as he was concerned was the failure to call the case to the attention of the Attorney General before the decision was made. He stated that this was "no ones function except mine; thus, the most serious blame in the entire matter is mine." He advised that the public relation aspects of cases need to be considered serious by those in higher echelons and that is his job and his position to consider such matters.

He advised that the failure to appeal was not an oversight but a decision deliberately arrived at. The Appellate Section and the Solicitor General's Office were both of the opinion that to file a notice of appeal and then to subsequently withdraw that notice, would have caused more public attention than not to file the appeal in the first instance. The Department had decided in the Compagna case, which was a similar matter, not to appeal when it was considered several months previously. They who considered this matter were thus confident that a similar position of "no appeal" should prevail in the DeLucia case and the best way to accomplish proper results would be to omit taking an appeal rather than noting the appeal and then withdrawing it.

ASSIGNMENT OF ASSISTANCE
MR. GOTTSHALL'S OFFICE

Mr. Callahan of the Administrative Division of the Bureau, at my request, contacted personnel officer John W. Adler of the Department and ascertained that Mr. Joseph J. Cella, an attorney, had been assigned to Mr. Gottshall as an assistant on August 25, 1952.

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INITIALS ON FILE COPY OF MEMORANDUM PREPARED BY MR. AARON E. GOTTSHALL, RECOMMENDING NO APPEAL

The yellow file copy of a memorandum of five pages prepared by Mr. Aaron E. Gottshall and recommending no prosecution reflects that it was typed on November 6, 1952. It bears the following initials:

"AEG" (A. E. Gottshall)

"RSE" (Robert S. Erdahl, Chief of Appellate Section)

"CBM" (Charles B. Murray, Assistant Attorney General)

"FES" (Fred E. Strine, Chief Administrative Regulations Section, Criminal Division)

"AFO" (Andrew F. Oehmann, Assistant to the Assistant Attorney General in Charge of the Criminal Division.)

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CBM:AHD:LS

95-23-38

G. A. R.

NOVEMBER 7, 1952

RECORDED

UNITED STATES ATTORNEY
CHICAGO, ILLINOIS

ATTENTION LULINSKI THE SOLICITOR GENERAL HAS DECIDED AGAINST APPEAL FROM FINDINGS AND ORDER JUDGE IGOE CASE PAUL DELUCIA VERSUS MARSHAL O'DONOVAN AND CASE THEREFORE CLOSED.

CHARLES B. MURRAY
ASSISTANT ATTORNEY GENERAL

CC: Records
Chrono.
Mr. Gottshall

COPY

IN THE

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

THE UNITED STATES OF AMERICA, ex rel PAUL DeLUCIA, Petitioner,	)	No. 50 C 1643
vs.	)	Habeas Corpus
THOMAS P. O'DONOVAN, United States Marshal, Respondent.	)	

ORDER

The Court having heretofore on August 21, 1952, filed its memorandum under Stipulation for Final Disposition in this cause, and having directed therein that a Judgment Order in accordance therewith be presented for entry on this 9th day of September, 1952; and now the parties being present, petitioner moves for his discharge.

Also the Court finds it unnecessary to rule on the request of petitioner for a holding that the respondent should have been limited in the matter of the facts and the law by reason of the order heretofore entered denying the petition for leave to plead over in the previous habeas corpus case. Therefore the motion of petitioner to include this finding in the present order is denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED in accordance with the said memorandum heretofore filed herein that the petitioner, PAUL DeLUCIA, be and he hereby is discharged, not to complete liberty, but to conditional liberty, in the custody of the Attorney General under supervision of the Board of Paroles.

IT IS FURTHER ORDERED that the memorandum heretofore filed stand as the court's findings of fact and conclusions of law.

ENTER:

United States District Judge

CRIMINAL DIVISION

AUG 26 1952

RECEIVED

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

UNITED STATES OF AMERICA, ex rel.,
PAUL DE LUCIA,

Petitioner,

vs. No. 52 C 1643

THOMAS P. O'DONOVAN, Marshal,

Respondent.

MEMORANDUM UNDER STIPULATION FOR FINAL DISPOSITION.

This is the second Habeas Corpus proceeding by Paul De Lucia. It appears subsequent to the case of U.S. v. O'Donovan, 82 F. Supp. 435, affirmed 178 F. 2d. 876, Dr. Killinger, Chairman of the Parole Board, issued a new parole violation warrant on November 22, 1950. Petitioner, on November 24, 1950, filed his Petition for Writ of Habeas Corpus and thereafter first and second amended petitions, which amended petitions added Dr. Killinger and the Parole Board as Respondents. On December 4, 1950, Motion of the Government to Dismiss Dr. Killinger and the Parole Board on jurisdictional grounds was allowed and the present Respondent is the U. S. Marshal. Upon rule to show cause why the writ should not issue, the Marshal filed his answer and amended answer, rule to show cause was allowed, and thereafter, on February 16, 1951, Respondent filed return to the writ which petitioner traversed and respondent filed replication.

Under agreement of the parties and consent of the Court, this matter has been continued from time to time pending the outcome of [illegible] et al. v. Hiatt, in the District Court in Atlanta, Georgia, decided September 18, 1951, reported in 100 F. Supp. 74, with subsequent appeal dismissed by the Government.

95-23-38

DEPARTMENT OF JUSTICE

25 AUG 25 1952

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The parties on May 27, 1952, nunc pro tunc, as of May 16, 1952, stipulated, subject to respondent's objection as to materiality, competency and relevancy, that the Court consider as evidence on behalf of Relator's position the following:

Atlanta Proceedings, June 11 - 14, 1938.

Testimony of Dr. Killinger, Chairman of the Board, beginning at Page 4.

Testimony of Mr. Lasbo, Page 221, of transcript.

Testimony of Louis Campagna, Page 228, and Charles Cino, Page 303.

Testimony of Eugene Bernstein, Page 370.

Letter from Chief Probation Officer Fisher to Parole Executive Urich dated March 8, 1946, at Page 64 of First Supplement to Motion of Campagna and Cino in the case of Campagna v. Hiatt, et al.

Letter from Dr. Killinger to Fisher dated March 25, 1939, Page 130.

Letter from Fisher to Dr. Killinger dated April 8, 1939, Page 131.

Deposition of Mrs. Cook, Alzina Reeves, at Page 132.

OTHER EVIDENCE.

Testimony of Colosimo before the Hoffman Committee, found in Relator's transcript of July 7, 1946 in the first De Lucia proceedings and in this cause, and

Therefore, the Court to take this matter under advisement.

The Government's principal objections to the evidence follows:

The evidence of the Atlanta trip and tax settlement at Atlanta, Georgia is applicable only to Campagna, and Cino and Delucia was not before that Court.

The present warrant dated November 22, 1950, is based on charges different than the July 1946 warrant.

The evidence at Atlanta refers to matters prior to March 1948, and the present warrant was issued two and one-half years later and based on different charges.

Relator's previous statements and affidavits apply to the 1948 warrants and are not here applicable.

The Government has controverted all of Relator's statements and affidavits by its pleadings and the writ should be discharged.

Neither party has offered or tendered further proof and the Court concludes the evidence of both parties is before the Court and the same constitutes a full and complete hearing of the respective contentions. The present motion filed by Relator is that the Court make final disposition of this cause on the record as it now stands.

Relator contends the instant proceeding is moot because subsequent to this proceeding Relator was again placed on parole. The court is of the opinion such Board action was to continue supervision during the present litigation and should not be construed as abandonment of the charge of parole violation. Relator further contends the charges contained in the November 22, 1950 De Lucia case, are now res adjudicata; that the Relator has never violated his parole, the Board has no new evidence, and therefore the present warrant was arbitrarily issued without any evidence, and therefore is a nullity and Relator is entitled to relief by habeas corpus.

The following referrals were charged in the first case:

"Present offense:

1. Failure to make full and truthful written reports to the Supervisor of Parole.
2. Untruthful statements covering expenditures during the months of December 1947, and January 1948.
3. Association with persons of bad reputation.
4. Failure to conduct himself honorably.

5. Failure to reveal source of monies used in settlement of Internal Revenue Tax, when questioned before a legally constituted body."

Refusals in the instant case are:

Present offense:

1. Failure to make full and truthful female report covering expenditures during the month of January, 1948.
2. Failure to reveal source of monies used in settlement of Internal Revenue Tax when questioned before a Federal Grand Jury.
3. Failure to reveal source of monies used in settlement of Internal Revenue Tax when questioned before a Congressional Committee of the Eighty-first Congress.
4. Failure to reveal the identity of the traveling companions on the TWA flight from Kansas City, Missouri, to Chicago, Illinois, August 13th, 1947 when questioned before a Federal Grand Jury.
5. Failure to conduct himself honorably.

Comparing the former with the present refusals, number one is identical except the month of January, 1948 is in the present refusals; two in the case as number one in the present refusal, except here, December 1947 and January 1948 are designated; former three has been omitted in the case at bar unless it means the airplane trip; four is identical with present five; former five is the case as present two and three except the legal bodies are designated as Grand Jury and Committee, and present number four is now unless contained in the general charge.

In the memorandum and explanation of the refusals, present number one relates to the wedding breakfast and subsequent reception

for De Lucia's daughter at the Blackstone Hotel on January 24, 1948. The charge is based that money given by guests at the wedding breakfast and reception was not reported as income to the parole authorities on petitioner's monthly report. The local parole agent at the time had a complete report from petitioner the the money contributed by such guests was the property of the newly married couple and not income to petitioner. Such report was accepted by the parole authorities and there is no evidence to establish such funds belonged to petitioner and should have been reported as income to him.

Referrals two and three relate to petitioner's failure to disclose the source of money used in settlement of his federal income tax when questioned by a 1947 Grand Jury and a special congressional committee in 1950. Petitioner's tax liability was settled by his attorney at Chicago under unusual circumstances. Petitioner under oath has stated, he did not under the 1948 warrant, nor under the present proceedings, nor at the time of the 1947 Grand Jury and the 1950 Special Committee, know the source of the funds used for the payment of his tax, and there is no evidence that he did know the source. Other than suspicious circumstances, the Government has no further proof and there is no evidence to support this charge. Referral four charges on August 13, 1947, when petitioner was paroled, there were two additional traveling companions on the airplane trip from Kansas City to Chicago whose names petitioner refused to reveal to the parole board and the 1947 Federal Grand Jury. Petitioner in the prior proceeding and here denies he knew the other two passengers; his testimony is he had no conversation or association with them during the trip and upon arrival at Chicago went directly to his home in a taxi with Louis Campagna who lived near him. This is substantiated by the Campagna testimony in the Atlanta case, and the Government has no evidence to the contrary. Referral five relates to and is dependent upon the preceding four referrals.

There is no direct evidence of parole violation under the present warrant. The charges are predicated upon the same circumstances, events and evidence as the 1948 warrant. Such charges and explanations are based upon inferences and conclusions assumed or felt by the Board to exist and there is no other or further evidence of a competent legal nature to the contrary.

The present statute, Sec. 4205, Title 18, U.S.C.A. omits "reliable information", and now provides for a warrant for one who has violated his parole. Respondent contends reliable information is not required nor indeed is any information now required to support a warrant of revocation. Such contention would result without redress in the arrest and detention of a parolee who has fulfilled all requirements of his parole, and entitled to remain on parole. The court may not adopt such contention. Before a prisoner is paroled, certain statutory facts and circumstances are required to be present, born from the nature of the offense, good prison conduct, the likelihood of rehabilitation, and the effect on society. These, together with others, relate to the right of a prisoner to parole which the Board under the statute considers. Whether there exists sufficient facts and circumstances to justify the exercise of requisite statutory discretion remains with the Board. When favorably exercised, a new status or legal right arises, the prisoner is admitted to parole and allowed to serve his remaining sentence outside prison walls under supervision and monthly report to his local parole officer. Such parole rightfully merited and earned under the statute invests in the parolee a status or right which he has the right to defend by due process in a court of law. In such case where it is alleged the parole termination was unlawful, the court is required to inquire into the legality of detention.

The parole laws are for the protection of society as well as rehabilitation of the parolee. If a prisoner be required to serve his maximum sentence he is ultimately turned back into society without supervision, and in many instances without adequate rehabilitation. When a parolee, as here, is normally adjusting and abiding by the terms of his parole, no parole violator's warrant should issue under the present statute without substantial evidence of a parole violation. To do so permits interruption of the rehabilitation by separation from family and job, thereby delaying and demoralizing the parolee. This is a loss to society and the unwarranted interruption imperils, and in many cases, would destroy the rehabilitation and the parole structure. The court is of the opinion such was not the congressional intent. Where the parole has been rightfully earned and the process of rehabilitation entered into with satisfactory progress, the court is of the opinion the congressional intent is

such progress shall not be lightly interrupted and only disturbed upon substantial evidence of a parole violation. Here, prior to the present warrant neither the local parole officers, nor any member of the Board appearing before the committee, had or knew of any facts or information of parole violation, considered petitioner was adjusting normally and was a good parole risk. During the pendency of this proceeding, no new evidence of a parole violation has been brought to attention, and the court is of the opinion had such been the case, it would have been presented to the court.

Having in mind the principles of the first case on appeal, the opinions of the District and Circuit Courts of the Fifth Circuit in the Compagna and Giles cases, and from the evidence, arguments and briefs before the court, the court finds the present warrant is based upon the same charges as contained in the 1948 warrant, and there is no substantial or legal evidence to justify the charge of parole violation. The basis of both warrants are the conclusions arrived at by the present Board from inferences and suspicion created by the unfavorable publicity in the former Board granting the three paroles and the desire of the current Board to be relieved therefrom. Such are insufficient to support a warrant for parole violation and the case was arbitrarily issued without evidence and therefore a nullity.

The restraint by respondent is illegal and Relator is discharged, not to complete liberty, but to conditional liberty, in the custody of the Attorney General under supervision of the Board of Paroles, as a reinstated parolee.

Judgment will be entered accordingly. Order to be presented to the Court September 9th, 1952.

J. Igoe [illegible]
D.J.

Dated this 21st day
of August, A. D., 1952.

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO: The Solicitor General

DATE: November 7 1952

FROM: Charles B. Murray, Assistant Attorney General

CBM:AEG:ls
95-23-38

SUBJECT: United States ex rel. Paul De Lucia
vs. O'Donovan, Marshal

Agree - No appeal. State that Board of Parole states that it has no interest in which to review the parole, there seems to be no point in taking the appeal. 11/7/52

* * *

Whether appeal should be taken from the Order by Judge Igoe (N.D. Ill.) discharging the petitioner, in an habeas corpus action, from the custody of the respondent Marshal and into the custody of the Attorney General under supervision of the Board of Parole.

The Order was entered September 9, 1952. The sixty-day period within which appeal can be noted expires November 8, 1952.

The United States Attorney recommends against appeal. We concur. The Board of Parole approves.

STATEMENT

This is the culmination of litigation begun by De Lucia, alias Paul (the waiter) Ricca, in July, 1948, after his arrest on a warrant charging violation of parole. It will be recalled that such warrants were also issued for the arrest of three of De Lucia's codefendants in Anti-Racketeering convictions (S.D. N.Y. 1943; affirmed, 146 F.(2d) 524), viz., Louis Compagna, Charles Gioe, and Phil D'Andrea. 1/ The warrants followed upon wide publicity criticizing the release of these racketeers on parole to their Chicago homes on the very date of eligibility and were rested largely upon their attitude and evasiveness in appearances before a Chicago grand jury and the House Committee on Expenditures in the Executive Departments, both of which bodies pursued extensive inquiries into the circumstances. Compagna and Gioe were arrested under the warrants and were committed to Atlanta Penitentiary from which they were discharged by habeas corpus actions (December, 1947), sustained on the ground that the warrants were void because not issued upon

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1/ The warrant as to D'Andrea was executed but the Board of Parole soon thereafter decided that he had not violated parole and restored him to complete parole status.

File

November 13, 1950

"reliable information," as required by the statute, 82 Fed. Supp. 295. It was reversed on appeal, 178 F.(2d) 42, and affirmed by an equally divided Supreme Court, 340 U.S. 880, Thereafter, pursuant to mandate, a full dress hearing on the merits was had in the District Court. The court found no substantial evidence of parole violation; held that the orders revoking the paroles were total nullities; and ordered the two restored to parole supervision, 100 Fed. Supp. 74. Appeal was declined, and the case closed. These facts are inserted because the principal allegations (all held for naught) of parole violation against Compagna, and the petitioner De Lucia were identical, as will appear, further on.

When De Lucia was arrested in Chicago under the original warrant in 1948 he started an habeas corpus action. The U.S. Attorney, on behalf of the respondent Marshal, filed a Demurrer instead of a Response on the ground that the court lacked jurisdiction to determine the facts underlying the warrant in advance of a hearing on the alleged violations before the Board of Parole. The demurrer was overruled and respondent moved for judgment on that technical ground; judgment in favor of petitioner, 82 Fed. Supp. 435. The Government appealed, and lost, 178 F.(2d) 876. Certiorari was applied for (No. 163, October term, 1950) and subsequently dismissed on motion by the Government (November 27, 1950). Meanwhile, on November 22, 1950, the Board of Parole issued a new warrant. It was rested upon allegations in substance the same as the allegations supporting the original warrant, but stated with greater specificity (See pages 4-5, Judge Igoe's Opinion in orange colored booklet).

340 U.S. 886.

Immediately upon arrest under the warrant De Lucia began an habeas corpus action and was released on bond, as originally. Subsequent pleadings included answer and return to the rule to show cause, traverse thereto, and replication by the respondent. The case was continued pending final determination in the Compagna-Gioe case already mentioned. In May, 1952, the parties entered into stipulation (subject to respondent's objection as to competency, etc.) that the court consider certain of the evidence adduced in the Compagna-Gioe case (See pp. 2-3, Judge Igoe's Opinion). The respondent's objections are set out on page 3 of the Opinion.

The court proceeded to disposition of the case upon the mentioned pleadings and evidence. It rejected petitioner's contention of mootness grounded on the fact that he had been placed under parole supervision after this proceeding was begun, but sustained his contention that the Board of Parole had no new evidence of

parole violation; that he had never violated parole, and that the warrant was therefore a nullity. Accordingly, Judge Igoe ordered his discharge from the custody of the respondent Marshal, and into the custody of the Attorney General as one returned to parole status.

DISCUSSION

This case still involves the question, decided against us by the Seventh Circuit in the prior appeal, whether a District Court has jurisdiction in habeas corpus action to examine the bases upon which a parole violation warrant was issued in advance of the parolee's appearance before the Board of Parole for a hearing. That is the procedure laid down by the statute, Section 4207, Title 18, which states that:

> "A prisoner retaken upon a warrant * * * shall be given an opportunity to appear before the Board of Parole," etc.

In Compagna v. Hiatt, et al, 178 F. 2d 42, the Fifth Circuit said in effect that the sole purpose of the warrant was to secure custody, after which the statute providing for a hearing before the Board came into operation. This view probably would not be accepted by the Seventh Circuit.

But assuming that a reversal could be secured on that ground, a commitment under the warrant and subsequent hearing by the Board, if followed by a revocation of parole, would assuredly provoke a contest in habeas corpus and a determination by the court whether the charges behind the warrant constituted a violation of parole. That was the precise procedure authorized by the mandate of the appellate court in Compagna v. Hiatt, et al. Obviously, then, the evidence relied upon to support the revocation of parole becomes all-important. If it falls short of substantiating the charges of violation ofparole upon factual, rather than circumstantial, grounds, the end result would no doubt be like that in Compagna v. Hiatt, et al. And what would be the profit in gaining a technical advantage if the real objective later were lost.

As to the evidence, three (3) of the alleged violations charged to De Lucia (Nos. 2, 3, 4, p. 4 Opinion) are rested on the same facts as the two (2) principal violations charged to Compagna (Nos. 1 and 3, page 76 of 100 Fed. Supp). They relate to the air-plane trip from Kansas City to Chicago and the failure to disclose the identity of two companions in the traveling group, suspected of being gangsters; the other involves the failure to reveal the source

of the monies used to settle the income taxes of Compagna and De Lucia. As to these alleged violations Judge Underwood held that:

> "There is not a scintilla of evidence as to the identity or reputation of the two unknown passengers although the Parole Board and the F.B.I. made diligent effort to secure such information (R. pp. 44, 112). Nor is there any evidence that petitioners had any acquaintance, connection, or association with them." 100 Fed. Supp., page 77.

> "Compagna could not disclose the sources of the (tax) money if he did not know them and he denied knowing them. There was no evidence of such fact other than the above circumstances and the suspicions and assumptions of the Board." 100 Fed. Supp., page 77.

Judge Igoe took into account the Atlanta testimony on these two violations and found it corroborative of De Lucia's own testimony. We quote Judge Igoe:

> "Petitioner under oath has stated, he did not under the 1948 warrant, nor under the present proceedings, nor at the time of the 1947 Grand Jury and the 1950 Special Committee, know the source of the funds used for the payment of his tax, and there is no evidence that he did know the source. Other than suspicious circumstances, the Government has no further proof and there is no evidence to support this charge. Referral four charges on August 13, 1947, when petitioner was paroled, there were two additional traveling companions on the airplane trip from Kansas City to Chicago whose names petitioner refused to reveal to the parole board and the 1947 Federal Grand Jury. Petitioner in the prior proceedings and here denies he knew the other two passengers; his testimony is he had no conversation or association with them during the trip and upon arrival at Chicago went directly to his home in a taxi with Louis Compagna who lived near him. This is substantiated by the Compagna testimony in the Atlanta case, and the Government has no evidence to the contrary."

The only additional charge levied against De Lucia is his

> "Failure to make full and truthful parole report covering expenditures during the month of January, 1948."

This relates to the expenditure of approximately $12,000 for a wedding breakfast and subsequent reception for De Lucia's daughter at the Blackstone Hotel on January 24, 1948. This sum was contributed

by the guests who gave it to De Lucia and he in turn paid the bill. The Parole Board's theory was that it constituted income to De Lucia and he failed to note it on his monthly report as either income or expense. But Judge Igoe rejected that theory as follows:

> "The local parole agent at the time had a complete report from the petitioner that the money contributed by such guests was the property of the newly married couple and not income to the petitioner. Such report was accepted by the parole authorities and there is no evidence to establish such funds belonged to petitioner and should have been reported as income to him." Opinion, page 5.

The Board of Parole admits inability to disprove the foregoing finding. The question of appeal was presented to the Board by our memorandum of October 16, 1952, and its answer (both attached) dispels any prospect of success in an habeas corpus action on the merits. Its answer follows:

> "This case has been carefully reviewed by a majority of the Board, and we agree with you that we do not have evidence sufficient and necessary to sustain a subsequent revocation of parole should a habeas corpus proceeding be forthcoming. The only new allegation in this particular case as compared to the Compagna-Gioe cases is the expenditures incurred in connection with De Lucia's daughter's wedding, and we have always felt that this evidence was not too well-founded.
>
> We do not, therefore, feel that an appeal should be taken from Judge Igoe's order in this case."

CONCLUSION

No appeal because of lack of evidence establishing parole violation on any point.

Enclosures: Pleadings
Judge Igoe's Opinion
U.S. Attorney's letter of 9-23
Original memorandum against appeal
in Compagna-Gioe case.

OFFICE OF
THE SOLICITOR GENERAL

Nov. 7, 1952

RE: UNITED STATES ex rel. PAUL De LUCIA vs. O'Donovan, Marshal.

NO APPEAL.

Robert L Stern

Robert L. Stern,
Acting Solicitor General.

Time Limit: Nov. 8

Filed

RECEIVED
SEP 25 1952
CRIMINAL DIVISION

United States Department of Justice

IN REPLY REFER TO INITIALS AND NUMBER
AG:ak

UNITED STATES ATTORNEY
NORTHERN DISTRICT OF ILLINOIS
450 UNITED STATES COURT HOUSE
CHICAGO

September 23, 1952

123-51-18
DEPARTMENT OF JUSTICE
21 SEP 25 1952
RECORDS
CRIM. - GEN. CRIME SEC.

Assistant Attorney General
Criminal Division
Department of Justice
Washington 25, D.C.

Re: U.S.A. ex rel PAUL DE LUCIA v. THOMAS P. O'DONOVAN, Marshal 50 C 144
D.J.Ref: 123-51-18 95-23-38 CBM:AEG:ls

Sir:

I am enclosing herewith two copies of the Order of Judge Igoe entered by him on September 9, 1952, in the above captioned matter. It will be noted that the order provides that the Memorandum of Judge Igoe, copies of which have been sent to you, stand as the court's findings of fact and conclusions of law.

The Chicago Probation Office advises us that it was agreed between De Lucia and that office that De Lucia would make a complete report of the wedding incident through the probation officer at the end of that particular year. This report, we are informed, was made by De Lucia, and it is the same as the explanation given thereafter by the relator, namely, that the fund was derived as gifts from the guests who attended the wedding. De Lucia, has, of course, in the prior habeas corpus proceeding submitted affidavits to that effect, and he has re-iterated the same in the instant case under oath.

We have strongly taken the position that this evidence was not properly before the court in either the prior or the present cases, for the reason that the referrals were not a part of the record in the last proceeding, and that in this proceeding the court had no jurisdiction to inquire into the facts behind the parole violation warrant, but that the relator would have to be remanded to the custody of the Attorney General, after which he could ask for a hearing before the parole board, at which time the parole would either be revoked or modified, or the charges dismissed.

Thereafter, we have contended the relator could sue out a petition for a writ of habeas corpus, and the court would then have the authority to inquire into the facts behind the order of revocation of parole.

The Judge has, nevertheless, disregarded all arguments with respect to law, and he has undoubtedly considered the "evidence" submitted by De Lucia.

An appeal in this matter would raise the issue as to whether or not the District Court may, on a petition for writ of habeas corpus, inquire into the facts upon which a parole violation warrant is issued, before the parolee is taken before the Parole Board for a hearing upon the warrant. This, we believe, is the rule to be deduced in the original Compagna and Gioe cases, decided by the U.S. Court of Appeals for the 5th Circuit, and affirmed by an equally divided Supreme Court.

Judge Underwood's opinion, upon remand of that case, from which there was no appeal taken by the government, substantiates quite conclusively this contention. However, we feel that there is nothing to be gained by prosecuting such an appeal in the instant case unless we can thereafter, at a Parole Board hearing, support the charges made in the warrant and in the referrals thereto.

It is our belief that such evidence is lacking, and that if the Parole Board revokes parole, the parolee in this case would, no doubt, be discharged upon the writ of habeas corpus, after inquiry is made with respect to the evidence needed to support such revocation.

A Minute Order entered in this case provides that the present bond posted by De Lucia remain in full force and effect pending the government's taking of an appeal.

We earnestly request the recommendations and instructions of the Department with respect to what action we should pursue in this matter.

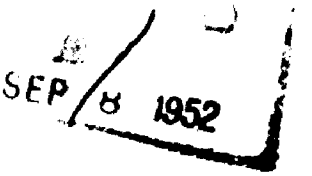
Respectfully,

OTTO KERNER, JR.
United States Attorney

Enc.

CB:ALG:ls
~~123-51-18~~
95-23-38 - G.A.R.

September 3, 1952



Otto Kerner, Jr., Esq.
United States Attorney
Chicago, Illinois

Re: Paul De Lucia v. O'Donovan, Marshal
Habeas Corpus No. 50 C 1643

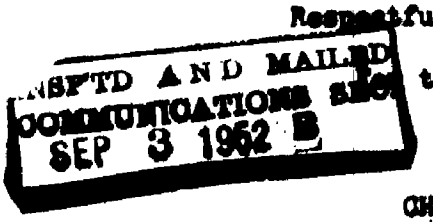
Dear Mr. Kerner:

We acknowledge receipt of two copies of the memorandum by Judge Igoe granting judgment to the petitioner in the above case. We note that the memorandum is dated August 21, and that the order reflecting the judgment is to be presented to the court on September 9.

Of particular interest is Judge Igoe's statement and summary disposition of De Lucia's failure to have reported the handling of the substantial sum covering the expenses incident to his daughter's wedding reception. The court found that sum to have been the property of the newly married couple in the absence of evidence supporting the proposition that the funds belonged to the petitioner De Lucia. It is further stated that a full report of the transaction was made by the petitioner to parole authorities, meaning probably the probation office at Chicago, and that such report was accepted. You have all the facts and are therefore in a position to determine whether they support the view taken by the court.

When the order to be signed on September 9 has been entered we will appreciate having you forward several copies thereof and at the same time having you submit your recommendation for or against appeal.

Respectfully,



the Attorney General

CHARLES B. MURRAY
Assistant Attorney General

cc: Records [redacted]
Records - File 123-51-18
Chrono.
Mr. Gottshall

prosecuting such an appeal in the instant case unless we can thereafter, at a Parole Board hearing, support the charges made in the warrant and in the referrals thereto."

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Charles B. Murray, Assistant Attorney General

DATE: October 21, 1952

FROM : Dr. George G. Killinger, Chairman, U. S. Board of Parole

SUBJECT: United States ex rel Paul De Lucia v. Thomas P. Donovan, Marshal

This case has been carefully reviewed by a majority of the Board, and we agree with you that we do not have evidence sufficient and necessary to sustain a subsequent revocation of parole should a habeas corpus proceeding be forthcoming. The only new allegation in this particular case as compared to the Compagna-Gioe cases is the expenditures incurred in connection with DeLucia's daughter's wedding, and we have always felt that this evidence was not too well-founded.

We do not, therefore, feel that an appeal should be taken from Judge Igoe's order in this case.

Noted cBm 10-22-52

File

Parole Board - Attention: Dr. Killinger

October 16 1952

Charles B. Murray, Assistant Attorney General

CBM:ALG:ls
123-51-18

United States ex rel Paul De Lucia v.
Thomas P. Donovan, Marshal

* * *

You have heretofore been furnished with a copy of the memorandum opinion of August 21, 1952, by Judge Igoe, Northern District of Illinois, granting the writ in the above case and ordering the petitioner De Lucia discharged from the technical custody of the respondent marshal and to be restored to the custody of the Attorney General under supervision of the Board of Parole. The Order which gave final effect to Judge Igoe's opinion and conclusions is dated September 9, 1952. A copy thereof is enclosed.

It now becomes necessary to determine promptly whether an appeal should be taken from Judge Igoe's Order. The views of the U.S. Attorney (Chicago) are contained in his letter to this Division dated September 23, 1952, of which a copy is enclosed for your information. You will note that the principal concern centers about the Parole Board's allegation that De Lucia violated the conditions of parole through failure to have included in his monthly report for January, 1948, an amount exceeding $12,000 representing expenses incurred in connection with a wedding reception for his daughter. This alleged violation is disposed of in favor of the petitioner with the finding by Judge Igoe that (a) the petitioner had acquainted the probation officer with the facts in this matter and that his report had been accepted and, (b) that there was no evidence that the funds so expended belonged to the petitioner, since they had been contributed by the guests at the reception and constituted gifts to the newly married couple. You will note that the U.S. Attorney expresses the belief that evidence necessary to overcome the position taken by the court is probably lacking and, if so, he inclines to the view that a subsequent revocation of parole could not be sustained in an habeas corpus proceeding.

An appeal from Judge Igoe's Order would involve the single question whether a district court is empowered under the parole laws to determine the sufficiency of a violator warrant before ever the parole violator appears before the Board for a hearing. It is reasonably clear from the decision in the Compagna-Gioe case in the Fifth Circuit, as well as other decisions, that this question would be resolved in favor of the Government. However, we agree with U.S. Attorney Kerner "that there is nothing to be gained by

September 9, 1952

Wm. Scott Stewart, Esq.
Attorney at Law
77 W. Washington Street
Chicago, Illinois

Re: DeLUCIA, Petitioner, v.
O'DONOVAN, Marshal

My dear Scott:

Reference is made to the above entitled Habeas Corpus proceeding recently pending in the United States Court for the Northern District of Illinois, at Chicago. I acknowledge receipt of and thank you for the opinion of Federal Judge Igoe rendered in the above entitled matter on August 21, 1952.

Your thoughtfulness in sending me Judge Igoe's opinion is greatly appreciated.

I have been traveling extensively since I saw you in Atlanta in June, 1951, and therefore have not been in a position to keep in as close touch with the developments in the Atlanta litigation that we tried as I would have liked to.

I hope that we run across each other again in the not too distant future.

With kind personal regards, I remain

Sincerely,

TOM DeWOLFE

TDeW:lp
cc: Mr. Murray
Mr. Gottshall
Mr. DeWolfe

United States Department of Justice

UNITED STATES ATTORNEY
EASTERN DISTRICT OF MISSOURI
ST. LOUIS 1, MISSOURI

JWN
SEP 22 1952

September 9, 1952

CRIM. SECTION
SEP 11 1952
RECEIVED

Charles B. Murray, Esq.
Assistant Attorney General
Criminal Division
U.S. Department of Justice
Washington, D.C.

Re: DeLUCIA, Petitioner, v.
O'DONOVAN, Marshal

Dear Mr. Murray:

Reference is made to the above entitled Habeas Corpus proceeding recently pending in the United States Court for the Northern District of Illinois.

You will find enclosed herewith copy of an opinion handed down by Federal Judge Igoe, in Chicago, in the above entitled matter under date of August 21, 1952. The opinion herewith enclosed was forwarded to me by Chicago Counselor Scott Stewart, who is counsel for the petitioner. The enclosure undoubtedly should be routed to Mr. Gottshall, Head of the Custody Unit, General Crimes Section, in your Division.

You will likewise find enclosed herewith copy of my letter under even date to Mr. Stewart regarding the above entitled matter. The enclosures are self-explanatory.

Respectfully,

TOM DeWOLFE

SEE ENCLOSURE FILES

Enclosures

TdeW:lp

File in 1

95-23-38
DEPT OF JUSTICE
25 SEP 11 1952
RECORDS BRANCH
CRIM.-GEN. CRIME SEC.